

AMENDED IN SENATE AUGUST 5, 2002

AMENDED IN ASSEMBLY MAY 15, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2463

Introduced by Assembly Member Members Pescetti and La Suer
(Coauthors: Assembly Members Bates, Hollingsworth, Maddox,
and Runner)

February 21, 2002

An act to amend ~~Section 12027.1~~ *Sections 209 and 667.61* of the Penal Code, relating to ~~firearms~~ *sex offenses*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2463, as amended, ~~La Suer~~ *Pescetti*. ~~Firearms; concealed weapons permits~~ *Sex offenses*.

Existing law provides that any person who kidnaps or carries away any individual for the purpose of committing robbery or certain sex offenses shall be punished by imprisonment in the state prison for life with the possibility of parole.

This bill would add to those sex offenses subject to the punishment, specified lewd or lascivious acts.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law provides that a person convicted of certain offenses, including a lewd or lascivious act upon a child under the age of 14 years, as specified, and under certain circumstances shall be punished by imprisonment in the state prison for life and shall not be eligible for

parole for 15 years, unless that person qualifies for probation, as specified.

This bill would delete the provision that makes the punishment for that offense inapplicable to a person who qualifies for probation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides a procedure for retired peace officers to obtain a permit to carry a concealed and loaded firearm. The privilege of carrying a concealed and loaded firearm may be revoked or denied, for good cause, as determined by a hearing board, as specified.~~

~~This bill would authorize a retired peace officer to recover reasonable attorney's fees as the prevailing party in an appeal of a hearing board decision that is appealed to superior court.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 12027.1 of the Penal Code is amended~~
- 2 SECTION 1. Section 209 of the Penal Code is amended to
- 3 read:
- 4 209. (a) Any person who seizes, confines, inveigles, entices,
- 5 decoys, abducts, conceals, kidnaps or carries away another person
- 6 by any means whatsoever with intent to hold or detain, or who
- 7 holds or detains, that person for ransom, reward or to commit
- 8 extortion or to exact from another person any money or valuable
- 9 thing, or any person who aids or abets any such act, is guilty of a
- 10 felony, and upon conviction thereof, shall be punished by
- 11 imprisonment in the state prison for life without possibility of
- 12 parole in cases in which any person subjected to any such act
- 13 suffers death or bodily harm, or is intentionally confined in a
- 14 manner which exposes that person to a substantial likelihood of
- 15 death, or shall be punished by imprisonment in the state prison for
- 16 life with the possibility of parole in cases where no such person
- 17 suffers death or bodily harm.

(b) (1) Any person who kidnaps or carries away any individual to commit robbery, rape, spousal rape, oral copulation, sodomy, *a lewd or lascivious act in violation of Section 288*, or sexual penetration in violation of Section 289, shall be punished by imprisonment in the state prison for life with possibility of parole.

(2) This subdivision shall only apply if the movement of the victim is beyond that merely incidental to the commission of, and increases the risk of harm to the victim over and above that necessarily present in, the intended underlying offense.

(c) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in the county jail for 12 months. If the court grants probation without requiring the defendant to be confined in the county jail for 12 months, it shall specify its reason or reasons for imposing a lesser penalty.

(d) Subdivision (b) shall not be construed to supersede or affect Section 667.61. A person may be charged with a violation of subdivision (b) and Section 667.61. However, a person may not be punished under subdivision (b) and Section 667.61 for the same act that constitutes a violation of both subdivision (b) and Section 667.61.

SEC. 2. Section 667.61 of the Penal Code is amended to read:

667.61. (a) A person who is convicted of an offense specified in subdivision (c) under one or more of the circumstances specified in subdivision (d) or under two or more of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 25 years except as provided in subdivision (j).

(b) Except as provided in subdivision (a), a person who is convicted of an offense specified in subdivision (c) under one of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 15 years except as provided in subdivision (j).

(c) This section shall apply to any of the following offenses:

(1) A violation of paragraph (2) of subdivision (a) of Section 261.

(2) A violation of paragraph (1) of subdivision (a) of Section 262.

1 (3) A violation of Section 264.1.

2 (4) A violation of subdivision (b) of Section 288.

3 (5) A violation of subdivision (a) of Section 289.

4 (6) Sodomy or oral copulation in violation of Section 286 or
5 288a by force, violence, duress, menace, or fear of immediate and
6 unlawful bodily injury on the victim or another person.

7 (7) A violation of subdivision (a) of Section 288, ~~unless the~~
8 ~~defendant qualifies for probation under subdivision (c) of Section~~
9 ~~1203.066.~~

10 (d) The following circumstances shall apply to the offenses
11 specified in subdivision (c):

12 (1) The defendant has been previously convicted of an offense
13 specified in subdivision (c), including an offense committed in
14 another jurisdiction that includes all of the elements of an offense
15 specified in subdivision (c).

16 (2) The defendant kidnapped the victim of the present offense
17 and the movement of the victim substantially increased the risk of
18 harm to the victim over and above that level of risk necessarily
19 inherent in the underlying offense in subdivision (c).

20 (3) The defendant inflicted aggravated mayhem or torture on
21 the victim or another person in the commission of the present
22 offense in violation of Section 205 or 206.

23 (4) The defendant committed the present offense during the
24 commission of a burglary, as defined in subdivision (a) of Section
25 460, with intent to commit an offense specified in subdivision (c).

26 (e) The following circumstances shall apply to the offenses
27 specified in subdivision (c):

28 (1) Except as provided in paragraph (2) of subdivision (d), the
29 defendant kidnapped the victim of the present offense in violation
30 of Section 207, 209, or 209.5.

31 (2) Except as provided in paragraph (4) of subdivision (d), the
32 defendant committed the present offense during the commission
33 of a burglary, as defined in subdivision (a) of Section 460, or
34 during the commission of a burglary of a building, including any
35 commercial establishment, which was then closed to the public, in
36 violation of Section 459.

37 (3) The defendant personally inflicted great bodily injury on
38 the victim or another person in the commission of the present
39 offense in violation of Section 12022.53, 12022.7, or 12022.8.

1 (4) The defendant personally used a dangerous or deadly
2 weapon or firearm in the commission of the present offense in
3 violation of Section 12022, 12022.3, 12022.5, or 12022.53.

4 (5) The defendant has been convicted in the present case or
5 cases of committing an offense specified in subdivision (c) against
6 more than one victim.

7 (6) The defendant engaged in the tying or binding of the victim
8 or another person in the commission of the present offense.

9 (7) The defendant administered a controlled substance to the
10 victim by force, violence, or fear in the commission of the present
11 offense in violation of Section 12022.75.

12 (f) If only the minimum number of circumstances specified in
13 subdivision (d) or (e) which are required for the punishment
14 provided in subdivision (a) or (b) to apply have been pled and
15 proved, that circumstance or those circumstances shall be used as
16 the basis for imposing the term provided in subdivision (a) or (b)
17 rather than being used to impose the punishment authorized under
18 any other law, unless another law provides for a greater penalty.
19 However, if any additional circumstance or circumstances
20 specified in subdivision (d) or (e) have been pled and proved, the
21 minimum number of circumstances shall be used as the basis for
22 imposing the term provided in subdivision (a), and any other
23 additional circumstance or circumstances shall be used to impose
24 any punishment or enhancement authorized under any other law.
25 Notwithstanding any other law, the court shall not strike any of the
26 circumstances specified in subdivision (d) or (e).

27 (g) The term specified in subdivision (a) or (b) shall be imposed
28 on the defendant once for any offense or offenses committed
29 against a single victim during a single occasion. If there are
30 multiple victims during a single occasion, the term specified in
31 subdivision (a) or (b) shall be imposed on the defendant once for
32 each separate victim. Terms for other offenses committed during
33 a single occasion shall be imposed as authorized under any other
34 law, including Section 667.6, if applicable.

35 (h) Probation shall not be granted to, nor shall the execution or
36 imposition of sentence be suspended for, any person who is subject
37 to punishment under this section for any offense specified in
38 paragraphs (1) to (6), inclusive, of subdivision (c).

39 (i) For the penalties provided in this section to apply, the
40 existence of any fact required under subdivision (d) or (e) shall be

1 alleged in the accusatory pleading and either admitted by the
2 defendant in open court or found to be true by the trier of fact.

3 (j) Article 2.5 (commencing with Section 2930) of Chapter 7
4 of Title 1 of Part 3 shall apply to reduce the minimum term of 25
5 years in the state prison imposed pursuant to subdivision (a) or 15
6 years in the state prison imposed pursuant to subdivision (b).
7 However, in no case shall the minimum term of 25 or 15 years be
8 reduced by more than 15 percent for credits granted pursuant to
9 Section 2933, 4019, or any other law providing for conduct credit
10 reduction. In no case shall any person who is punished under this
11 section be released on parole prior to serving at least 85 percent of
12 the minimum term of 25 or 15 years in the state prison.

13 *SEC. 3. No reimbursement is required by this act pursuant to*
14 *Section 6 of Article XIII B of the California Constitution because*
15 *the only costs that may be incurred by a local agency or school*
16 *district will be incurred because this act creates a new crime or*
17 *infraction, eliminates a crime or infraction, or changes the penalty*
18 *for a crime or infraction, within the meaning of Section 17556 of*
19 *the Government Code, or changes the definition of a crime within*
20 *the meaning of Section 6 of Article XIII B of the California*
21 *Constitution.*

22 ~~to read:~~

23 ~~12027.1. (a) (1) (A) (i) Any peace officer employed by an~~
24 ~~agency and listed in Section 830.1 or 830.2 or subdivision (c) of~~
25 ~~Section 830.5 who retired after January 1, 1981, shall have an~~
26 ~~endorsement on the identification certificate stating that the~~
27 ~~issuing agency approves the officer's carrying of a concealed and~~
28 ~~loaded firearm.~~

29 ~~(ii) Any peace officer listed in Section 830.1 or 830.2 or~~
30 ~~subdivision (c) of Section 830.5 who retired prior to January 1,~~
31 ~~1981, is authorized to carry a concealed and loaded firearm if the~~
32 ~~agency issued the officer an identification certificate and the~~
33 ~~certificate has not been stamped as specified in paragraph (2) of~~
34 ~~subdivision (a) of Section 12027.~~

35 ~~(iii) Peace officers not listed in clause (i) or (ii) who were~~
36 ~~authorized to, and did, carry firearms during the course and scope~~
37 ~~of their employment as peace officers, shall have an endorsement~~
38 ~~on the identification certificate stating that the issuing agency~~
39 ~~approves the officer's carrying of a concealed and loaded firearm.~~

1 ~~(B) An identification certificate authorizing the officer to carry~~
2 ~~a concealed and loaded firearm or an endorsement on the~~
3 ~~certificate may be revoked or denied by the issuing agency only~~
4 ~~upon a showing of good cause. Good cause shall be determined at~~
5 ~~a hearing, as specified in subdivision (d).~~

6 ~~(2) A retired peace officer may have his or her privilege to carry~~
7 ~~a concealed and loaded firearm revoked or denied by violating any~~
8 ~~departmental rule, or state or federal law that, if violated by an~~
9 ~~officer on active duty, would result in that officer's arrest,~~
10 ~~suspension, or removal from the agency.~~

11 ~~(b) (1) An identification certificate authorizing the officer to~~
12 ~~carry a concealed and loaded firearm or an endorsement may be~~
13 ~~revoked or denied by the issuing agency only upon a showing of~~
14 ~~good cause. Good cause shall be determined at a hearing, as~~
15 ~~specified in subdivision (d).~~

16 ~~(2) An identification certificate authorizing the officer to carry~~
17 ~~a concealed and loaded firearm or an endorsement may be revoked~~
18 ~~only after a hearing, as specified in subdivision (d). Any retired~~
19 ~~peace officer whose identification certificate authorizing the~~
20 ~~officer to carry a concealed and loaded firearm or an endorsement~~
21 ~~is to be revoked shall have 15 days to respond to the notice of the~~
22 ~~hearing. Notice of the hearing shall be served either personally on~~
23 ~~the retiree or sent by first-class mail, postage prepaid, return~~
24 ~~receipt requested to the retiree's last known place of residence.~~
25 ~~Upon the date the agency receives the signed registered receipt or~~
26 ~~upon the date the notice is served personally on the retiree, the~~
27 ~~retiree shall have 15 days to respond to the notification. A retired~~
28 ~~peace officer who fails to respond to the notice of the hearing shall~~
29 ~~forfeit his or her right to respond.~~

30 ~~(3) An identification certificate authorizing the officer to carry~~
31 ~~a concealed and loaded firearm or an endorsement may be denied~~
32 ~~prior to a hearing. If a hearing is not conducted prior to the denial~~
33 ~~of an endorsement, a retired peace officer, within 15 days of the~~
34 ~~denial, shall have the right to request a hearing. A retired peace~~
35 ~~officer who fails to request a hearing pursuant to this paragraph~~
36 ~~shall forfeit his or her right to the hearing.~~

37 ~~(c) A retired peace officer, when notified of the revocation of~~
38 ~~his or her privilege to carry a concealed and loaded firearm, after~~
39 ~~the hearing, or upon forfeiting his or her right to a hearing, shall~~
40 ~~immediately surrender to the issuing agency his or her~~

1 ~~identification certificate. The issuing agency shall reissue a new~~
2 ~~identification certificate without an endorsement. However, if the~~
3 ~~peace officer retired prior to January 1, 1981, and was at the time~~
4 ~~of his or her retirement a peace officer listed in Section 830.1 or~~
5 ~~830.2 or subdivision (e) of Section 830.5, the issuing agency shall~~
6 ~~stamp on the identification certificate "No CCW privilege."~~

7 ~~(d) (1) Any hearing conducted under this section shall be held~~
8 ~~before a three-member hearing board. One member of the board~~
9 ~~shall be selected by the agency and one member shall be selected~~
10 ~~by the retired peace officer or his or her employee organization.~~
11 ~~The third member shall be selected jointly by the agency and the~~
12 ~~retired peace officer or his or her employee organization.~~

13 ~~(2) Any decision by the board shall be binding on the agency~~
14 ~~and the retired peace officer.~~

15 ~~(3) The retired peace officer shall be entitled to recover~~
16 ~~reasonable attorney's fees from the issuing agency if both of the~~
17 ~~following are met:~~

18 ~~(A) The officer is the prevailing party in an appeal of a hearing~~
19 ~~board decision that is appealed to superior court.~~

20 ~~(B) The court makes a finding that the denial or revocation of~~
21 ~~the identification certificate authorization or endorsement,~~
22 ~~authorizing the officer to carry a concealed and loaded firearm,~~
23 ~~was arbitrary and without merit.~~

24 ~~(e) No peace officer who is retired after January 1, 1989,~~
25 ~~because of a psychological disability shall be issued an~~
26 ~~endorsement to carry a concealed and loaded firearm pursuant to~~
27 ~~this section.~~